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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.

We Open a Texas Office at Dallas.

On April 7, 1931, we opened a Texas office in Dallas. Francis F. Bokern has been placed in charge. Mr. Bokern has been an assistant in our St. Louis office for the past five and one-half years. The Texas office, our twenty-fourth, is located in the Republic Bank Building, 1309 Main Street, Dallas. The telephone call is Dallas 2-3832.

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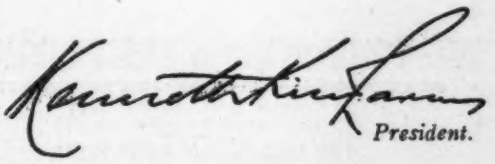

President.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for May

Talks on Foreign Corporations

A corporation's activities in a foreign state are frequently confined to the storage of goods therein in some warehouse or elsewhere, orders within the state being accepted at the home office of the corporation and delivery made from the warehouse or the depositary in the foreign state. When such methods are employed careful consideration should be given to the necessity for qualification as a foreign corporation in the state where the depositary is located. In this class of cases it may be said generally that a transaction is interstate commerce if the shipment into the state is made pursuant to orders previously taken and the depositary used temporarily, simply as a distributing point; but, if the goods are at rest within the state, when the orders are taken and the sales made, the transactions are local or intrastate business.

In a Washington case, (Dalton Adding Machine Sales Co. vs. Lindquist, 137 Wash. 375) the court said: "Before any sale is attempted, the machines are within the state. They have come to a state of rest, and are a part of the general property within the state, protected by the laws of the State and subject to the same condition, with respect to their disposition as like property generally within the state is subjected. That a business so conducted is intrastate business rather than interstate commerce business, is held by the authoritative court."

In a Kentucky case (Dayton vs. Brewing Company, 195 S. W. 133) it is said that "It is, however, a well-established rule, that the sale of property moving in interstate commerce must take place in one state and the property be sent into another state pursuant to the sale before it comes within the protection of the commerce clause of the Constitution." And in Virginia, "the test which seems to determine whether the transaction is to be regarded as belonging to interstate or to intrastate commerce is whether the property which is the subject matter of the sale is within the jurisdiction of the state at the time the sale is made." (Roselle vs. Commonwealth, 110 Va. 235.)

An Oklahoma case mentions the fact that a foreign corporation maintained no storage- or warerooms in Oklahoma as an element to be considered in deciding that the corporation was engaged in interstate commerce and was not doing business in the state so as to require qualification. (Fruit Dispatch Co. vs. Wood, 140 Pac. 1138.)

The question is one of sufficient importance to require a determination under the particular state of facts, as to whether a corporation maintaining a depositary in any certain state, is engaged in interstate or intrastate business.

Domestic Corporations

Illinois.

President of corporation is without authority, ex officio, to fix amount of officers' salaries. Plaintiff's action here is for amounts alleged to be due him on account of salary promised him by the president of a corporation of which he was an officer and director. The Supreme Court of Illinois, reversing the judgment below and remanding, sustains the contention of the corporation that it is not bound by the promises made, in this regard, by its president. The court says that the general rule is that the president of a corporation, as agent and representative, has power, in the ordinary course of business, to execute contracts and bind the corporation in so doing, but that the power to make a contract with a director or other officer of the corporation fixing the salary of such director or officer cannot be regarded as incident to the power of the president, and that the president's authorization cannot be presumed but must be proved (by a by-law or by resolution of the board of directors). Acceptance of the benefit of the contract and estoppel from setting up its invalidity, and recovery under a quantum meruit, not being set up in the bill of particulars, are not at issue. Proof is wanting to establish plaintiff's claim under his bill of particulars in which he elected to rely on the contract between himself and the president. Bloom vs. Nathan Vehon Co., 173 N. E. 270, Miller, Gorham & Wales and Koven & Rappaport, all of Chicago (Herbert C. De Young, of Chicago, of counsel), for plaintiff in error. Short, Rothbart, Willner & Lewis, Dwight McKay, and Walter H. Shurtleff, all of Chicago (John L. Fogle, of Chicago, of counsel), for defendant in error.

Michigan.

On the right of a corporation organized prior to 1921 to consolidate on vote of three-quarters of the stock. Bill by dissenting stockholder to set aside consolidation of her corporation with another corporation authorized by vote of more than three-quarters of the legally issued capital stock as provided by the present corporation code of Michigan (Chapter 84, Public Acts of 1921). The law under which plaintiff's corporation was originally organized made no provision for consolidation and so there was then no statutory authority thereunto. The new corporation law, carrying the specific provision in regard to consolidation referred to above, by its terms embraced then existing corporations organized under prior laws, which were by such 1921 Act repealed, acquired rights, privileges, etc., of the old corporations being confirmed. Plaintiff acquired her stock subsequent to the 1921 enactment. She prevailed below. The Supreme Court of Michigan reverses, saying: "Passing the question of the authority of the Legislature, under the reserved power (Article 12, § 1, state Constitution), to alter, amend, repeal, or abrogate all rights, privileges, or franchises of a corporation, we consider whether plaintiff may complain, having acquired her stock after the Legislature had conferred on the corporation the right of consolidation. Under the weight of authority she may not.

* * * Plaintiff has established no infirmity in the consolidation and no just cause for complaint." Kirby vs. Saginaw Hotels Co., Inc. et al., 235 N. W. 153. Humphrey, Grant & Henry, of Saginaw, for appellants. O'Keefe & O'Keefe, of Saginaw, for appellee.

Missouri.

Purchase by corporation of its own stock. Action for conversion by a former employee of a corporation, against the corporation, on account of its refusal to deliver to him certain of its stock purchased by him on the instalment plan under a contract providing that if at any time within five years after the purchase the stockholder should cease to be an employee, for any cause other than death, the company could repurchase the shares by payment to the then former employee of the amount paid in by him plus interest at 6%, but less all dividends. Plaintiff ceased to be an employee within the five-year period; the company gave notice that it would exercise its option to acquire his shares and made tender, which was refused, delivery of the stock being demanded. It was contended that the repurchase agreement was ultra vires the corporation. The United States Circuit Court of Appeals, affirming the judgment below, holds the contract valid and enforceable. The court says: "We are of the opinion that the option to repurchase stock as expressed in the employment contract, under the circumstances of this case, is under the laws of Missouri, clearly within the implied powers of the corporation, that nothing disapproved by the courts of Missouri appears in this record, and that, inasmuch as the performance of the contract will not impair appellee's capital or jeopardize in any way the rights of creditors or any other party in interest, the same is valid." Harker vs. Ralston Purina Co., 45 F. (2d) 929. Paul Y. Davis, Henry H. Hornbrook, Kurt F. Pantzer, and Ernest R. Baltzell, all of Indianapolis, Ind., for appellee. Rhodes E. Cave, P. Taylor Bryan, George H. Williams, and Thomas S. McPheeters, all of St. Louis, and James W. Fesler, Harvey J. Elam, and Howard S. Young, all of Indianapolis, Ind., for appellee.

On the right of Missouri ancillary administrator of New York decedent dying possessed of stock in Missouri corporation to have title to such stock transferred to him. The citations to Lohman vs. Kansas City Southern Railway digested in the April 1931 JOURNAL, page 368, under the heading as shown above, were improperly given as 33 F. (2d) 112, 117, 118. The correct citations are 33 S. W. (2d) 112, 117, 118.

New Jersey.

Summary judgment for plaintiff in New Jersey court in suit on judgment of New York court against New Jersey corporation on single contract of purchase made in New York. An officer of a New Jersey corporation maintaining as its sole business two retail stores in New Jersey went to the New York City salesrooms of a New York

corporation and there placed an order for a certain number of hats. Shipment was made; controversy arose as to quantity (ordered, shipped, billed); on a call made at the New York City salesrooms in connection with the controversy by the same officer who had done the purchasing service of process was made on him on behalf of the New Jersey corporation in an action to recover under the contract; "the suit was vigorously defended on the merits—jurisdiction was not questioned"; judgment was rendered for the New York corporation. In the present suit, in the Supreme Court of New Jersey, on that judgment, the motion for summary judgment is granted. The court says that the defendant having entered the state of New York for the purpose of making and having made there a contract of purchase "thereby submitted itself to the jurisdiction of that sovereignty so far as to be liable to a suit therein in regard to that contract, when summoned according to the laws of that state," and, as to the force of the summons, jurisdiction not having been questioned and the suit having been "vigorously defended on the merits," defendant in fact submitted itself to the jurisdiction of the New York court with respect to this particular contract, even though it was not "doing business" in New York, a condition precedent to legal service of process in New York on an unqualified foreign corporation. Mennen Hat Co., Inc., vs. Stanley Stores, Inc., 153 A. 590. Stein, McGlynn & Hannoch, of Newark, for plaintiff. Morris Spritzer, of New Brunswick, for defendant.

Texas.

Correction. The decision in Federal Crude Oil Co. vs. Yount-Lee Oil Co. (35 S. W. (2d) 111), digested in the JOURNAL for April, 1931, at page 370, under Texas, was by the Commission of Appeals, and not by the nonexistent "Court of Common Appeals" as erroneously stated in the digest.

Washington.

Stockholder paying in property for stock may be held liable to creditors for full par value of stock issued therefor. A man had a certain device in which he interested another man to whom he sold a half interest; the two decided to form a corporation and entered into a stock subscription agreement; the corporation was formed; the two men were the sole stockholders and sole directors; the corporation through its directors accepted the offer of the device for all of the authorized capital stock. The stock was issued and declared "as fully paid for." The record is not clear but the purchaser of the one-half interest must have agreed to pay in a certain amount of cash, because he did so. However—the device proved to be neither new nor novel and was not patentable; the corporation was not successful; in an action against the corporation by a creditor a receiver was appointed; he could find no assets; he then petitioned the court for recovery from the stockholders of the amount of their unpaid stock subscriptions to the extent of proved claims against the corporation. Judgment below went against the two men and each of them, the one who had made a par-

tial payment in cash to be credited with the amount of such payment. The original owner of the device appealed. The Supreme Court of Washington affirms saying (by quotation from one of its former opinions) that in such a case where stock has been issued, as fully paid, for property of a fictitious or inflated value, "a court of equity will compel a payment by the stockholders, for the benefit of the creditor who has dealt with the corporation relying upon the asserted value of its assets, to the full amount or face value of the stock." Electromatic Cooling Co. vs. Milne-Ryan-Gibson, Inc., 294 P. 1113. W. H. Pemberton and Roy D. Robinson, both of Seattle, for appellant. Hyland, Elvidge & Alvord, Tucker & Tucker, and J. B. Olmstead, all of Seattle, for respondent.

Foreign Corporations

Arkansas.

Corporation need not either own or rent place of business at which process may be served on its designated agent. Defendants-appellants (a foreign corporation and its statutory agent) appeared specially for purpose of filing motion to quash a summons on the ground that the service did not meet the requirements of the statute relative to service on foreign corporations doing business in the state. Service was made on the corporation by delivering a copy of the summons to its agent at its place of business, the agent being "duly authorized to receive service of said summons at said place." The Supreme Court of Arkansas, affirming the judgment below holds the service good and says (in that regard): "It is not necessary for a foreign corporation to own or rent a building in which it conducts its business in order that legal service may be obtained upon it by delivering a copy of the summons to its agent in charge of its business. The requirement of the statute is that summons must be served upon its agent at its place of business, and that means on the agent in charge of its business at any place, irrespective of kind or character, at which it conducts and operates its business." Ramey et al. vs. Baker et al., 34 S. W. (2d) 461. N. F. Lamb and Dudley & Dudley, all of Jonesboro, for appellants. Claude B. Brinton, of Jonesboro, for appellees.

Florida.

Officers of New York corporation held personally liable as partners on transaction entered into in Florida by the corporation at a time when it was not licensed to do business in Florida. A New York corporation, not then licensed to do business in Florida, purchased certain Florida real estate, giving a note secured by a mortgage on the property for a portion of the purchase price. The note was executed on behalf of the corporation by its president, as such, and by its secretary, as such. Some months later the corporation was licensed to do business in Florida. Thereafter, the note not having been paid, when due, this action was brought against the president and secretary,

individually, as partners, on the note ($17,500, with interest at 8%). Reversing the court below, in a four to two decision, the Florida Supreme Court holds that the defendants are liable, on the authority of Taylor vs. Branham, 35 Fla. 297, 17 So. 552. It was pleaded that the purchase of the land and the execution of the mortgage and note constitute the sole transaction of business in Florida by the corporation. The court says: "The doctrine is well settled in this State that a foreign corporation has no authority to transact business in this State before it complies with the requirements of the laws of this state and that when its stockholders and officers undertake to transact any business in this State in the name of a corporation not authorized under the laws of this State to transact business here they are held to individual liability as partners. It is not a question of the validity of the debt incurred, it is merely a question of the liability to which the officers of the corporation subject themselves in such transactions." It is our understanding that a petition for a rehearing has been filed. Herbert H. Pape, Inc. vs. Henry C. Finch and Millicent M. Finch, as partners doing business under the firm name of Broad Albin Storage Company. Not yet officially reported.

Iowa.

Building an organ without the state, shipping it into the state, and there installing it, does not constitute "doing business" in state. Here, under a contract "by whose terms the defendant [a corporation foreign to Iowa and not licensed to do business in that state] was to build a pipe organ for plaintiff, to deliver it on board cars in New Jersey, and to install it in a designated theater in Davenport, Iowa." $15,000, one-tenth of the purchase price, was paid at the time of signing. Plaintiff finding himself unable to accept the organ so notified defendant, and later brought this suit to recover the amount of the down payment on the ground that the contract was void as it was made in Iowa and the defendant was a foreign corporation and was not licensed to do business in Iowa, and because the contract was indefinite. The definiteness of the contract is established. Defendant prevailed below; the United States Circuit Court of Appeals, Eighth Circuit, affirms. The court says that if the making of the contract was an act by which the parties were engaging in interstate commerce Iowa laws have no application, and, determining that the making of the organ without the state and its shipment into the state and its installation there (the latter a highly technical operation, the findings not showing that it could have been accomplished by other than defendant's trained specialists) involve interstate commerce only, holds that, such being the case, the making of the contract itself "was so much an appropriate part of a sale of goods in interstate commerce that the statutes of Iowa which have been cited were not applicable and that the corporation legally executed the contract." The contract provided that the organ should be delivered f. o. b. Garwood, N. J. The court says that this fact must be considered in determining the nature of the contract, but—"Considering the purpose the parties

had in mind, of the final assembling and delivery of a completed organ in place in a theater in Davenport, it seems clear that a sale and delivery of the organ in interstate commerce was contemplated, and the provisions for delivery free on board cars in New Jersey was a mere arrangement by which the purchaser agreed to pay freight charges from Garwood to Davenport." Palmer vs. Aeolian Co., 46 F. (2d) 746. A. G. Bush, of Davenport. (Curtis Bush, of Davenport, on the brief), for appellant. Wayne G. Cook, of Davenport (Messrs. Lane & Waterman, of Davenport, on the brief), for appellee.

Michigan.

Unqualified foreign corporation may sue in Michigan courts on transaction growing out of isolated transaction in state. The court says that "the record makes up in brevity for what it lacks in clarity and detail." However, plaintiff is an Illinois corporation, not qualified in Michigan, engaged in the business of making commercial collections. It sent a solicitor to defendant, engaged in business in Michigan, and a collection contract was obtained, this being sent to Chicago for approval. Action is on the contract. One defense urged was that plaintiff is precluded from bringing suit because of its failure to qualify. Affirming the judgment below for plaintiff the Supreme Court of Michigan says: "We are not confronted with a situation where there has been a series of transactions by a foreign corporation, nor where defendant [plaintiff (?)] established an agency or opened a branch office in this state. No act whatsoever on its part in this state is shown, except the exclusive one of soliciting and entering into the contract on which this suit is brought. While the law properly demands that a foreign corporation must first obtain a certificate of authority to do business within this state before it may make a valid contract in this state, it may bring suit without first qualifying in order to assert its rights arising out of an isolated transaction conducted in this state by an agent of the foreign corporation." National Adjusting Asso. vs. Dallavo, 234 N. W. 485. Peter P. Boyle, of Detroit, for appellant. George O. Hansen, of Detroit, for appellee.

Service of process on secretary of state on behalf of foreign corporation must be made at his office. One of the defendants here is a Delaware corporation licensed to do business in Michigan. The Michigan statutes provide that service of process against such a corporation may be made on the secretary of state. Process, here, was served against the corporation referred to on the secretary of state when he was in Grand Rapids. Motion to dismiss on the ground that service was not made on the secretary at his office in the capitol at Lansing was granted below. The Supreme Court of Michigan affirms saying that, for several reasons, the Legislature must have intended that service on the secretary of state should be at his office only. Huckle vs. Mt. Forrest Rabbitries et al., 235 N. W. 213. C. G. Turner and Smith & Searl, all of Grand Rapids, for appellant. Sempliner, Dewey, Stanton & Bushnell, of Detroit (William H. Messinger, of

Grand Rapids, and Arthur F. Neef, of Detroit, of counsel), for appellees.

New York.

Stockholder of foreign corporation not personally liable for debt due employee, on account services rendered to the corporation. "The action is to charge defendants, stockholders of a Delaware corporation, with personal liability for a debt due plaintiff by the corporation for services performed by him as an employee. Liability is predicated on sections 71, 72, and 73, of the Stock Corporation Law, which provide, subject to certain limitations and upon the performance of certain conditions precedent, for personal liability of the stockholders of every stock corporation for all debts due plaintiff by the corporation for services performed by him as an employee." The New York Supreme Court, New York County, holds that the provisions of the law sections referred to have no application to a corporation foreign to New York. Bogardus vs. Fitzpatrick et al., 247 N. Y. Sup. 692. Albert Woodruff Gray, of New York City, for plaintiff. Killeen & Sweeney, of Buffalo, for defendants.

Maintenance in New York of an office for the transfer of its stock, by a foreign corporation, without more, does not render it amenable to process in New York. So holds the New York Supreme Court, Special Term, Part 1, New York County, March 16, 1931. The court says, inter alia: "A contrary holding would make every foreign corporation the stocks of which are traded in on the Exchange amenable to process here, if, in compliance with the Stock Exchange rules, it merely maintained a transfer office, either in its own name or by an agency." Hansen et al. vs. Pennroad Corporation et al., *The New York Law Journal*, March 17, 1931.

Service of process on foreign corporation held invalid as corporation was not "doing business". The United States District Court, Southern District of New York, says (memorandum by Coxe, D. J.): "I do not think enough has been shown to sustain the service in this case. (Rosenberg vs. Curtis, 260 U. S. 516; Tauza vs. Susquehanna, 220 N. Y. 259). The Herter Company acts merely as a commission agent, and has no authority to ship, bill, or receive payment on orders booked. Its function is merely solicitation; and that of itself is insufficient to support the jurisdiction. (Green vs. Chicago, 205 U. S. 530; Peoples vs. American, 246 U. S. 79). The placing of the defendant's name on the directory board at 100 Hudson Street, and the listing in the telephone book and the corporation directory, were for the convenience, and at the expense, of the Herter Company, and without direct authority from the defendant. In any event, they do not indicate such a systematic and regular course of business as to warrant the inference that the defendant was present in this District when the subpoena was served. (International vs. Kentucky, 234 U. S. 579; Rosenberg vs. Curtis, supra). Neither is the placing of the name "New

York" with that of six other large cities, on the defendant's letterhead, to be taken as a recognition of the existence of a general office here, or an admission that the defendant was 'doing business' in New York. The motion to quash is granted." Panscrape Corporation vs. Metal Textile Corporation, decided February 17, 1931. Commerce Clearing House Court Decisions Reporting Service, Requisition No. 37147. Not yet officially reported.

When unqualified foreign corporation may be sued in courts in New York. Suit was brought against defendant-appellee, a Massachusetts corporation, not qualified in New York, in a New York state court; on removal to the Federal District Court a motion to set aside the service of summons because the corporation was not doing business within the state of New York, was granted. The United States Circuit Court of Appeals, Second Circuit, affirms. The corporation is engaged in managing, as supervising engineer, public utility corporations of whose shares it owns a controlling interest either directly or through a holding company. One, only, of these is a New York corporation, and that one has never been actually engaged in business. Defendant has a small office in New York (stenographer, telephone, name on door) used only on occasional visits by officers negotiating for the purchase of company shares, all contracts of purchase being made in Boston, however. The suit here is on a contract for services, made in New York. The court says that for a foreign corporation to be "present" in the state for purposes of suit against it "there must be some continuous dealings in the state of the forum; enough to demand a trial away from its home." Here, "the acquisition of a new company whose business the defendant might supervise was of necessity sporadic; it was no part of its ordinary activity." There is quite a lengthy discussion with references to numerous cases. It is said that "It is quite impossible to establish any rule from the decided cases; we must step from turf to turf across the morass." "It is fairer that the plaintiff should go to Boston than that the defendant should come here. Certainly such a standard is no less vague than any that the courts have hitherto set up; one may look from one end of the decisions to the other and find no vade mecum." Hutchinson et al. vs. Chase & Gilbert, Inc., et al., 45 F. (2d) 139. Merrill, Rogers, Gifford & Woody, of New York City (Joshua D. Jones and Wilson B. Brice, both of New York City, of counsel), for appellants. Boyd, Chapman & Vreeland, of New York City (John S. Chapman, Jr., of New York City, of counsel), for appellee.

Ohio.

Leasing of motion picture films for exhibition in Ohio constitutes "doing business" in Ohio. In THE CORPORATION JOURNAL for April, 1931, page 375, appeared a digest of the decision of the Ohio Court of Appeals (Jan. 26, 1931) in this case reversing the judgment of the court below such judgment being for defendant on the ground that as plaintiff was an unlicensed foreign corporation engaged in business in Ohio it

could not maintain the action. On rehearing, the Ohio Court of Appeals (Cuyahoga County—Eighth District, No. 11169), affirms the judgment below, saying: "We cannot say, as a matter of law, that the finding of the trial court that plaintiff was doing business within this state, has no basis in law, nor can we say that the conclusion reached by the trial court is manifestly against the weight of the evidence." The action is to recover certain amounts alleged to be due the plaintiff, a New York corporation not licensed to do business in Ohio, under contracts of lease of moving picture films, from an Ohio corporation. In the April digest it was said: "Each contract was for a five-year lease of positive prints of certain motion picture films to be shipped from without the state of Ohio, payable in advance or C. O. D. for exhibition purposes by the lessee in Ohio and elsewhere, a certain percentage, also, of the amounts realized from the showings to be paid by the lessee. Advertising matter and certain accessories were supplied by the lessor on substantially like terms; a lien was retained by the lessor for unpaid rentals; lessee is protected in exclusive exhibition; lessor to use good offices with Board of Censors, if necessary." Short Films Syndicate, Inc., plaintiff in error vs. Standard Film Service Co., defendant in error. Decided March 16, 1931, not yet reported. Boer, Arnold & Tobias, of Cleveland, for plaintiff in error. L. M. Rich, of Cleveland, for defendant in error.

Pennsylvania.

Soliciting orders, and existence of advertised place of business for such purpose, sufficient for service of process on unqualified foreign corporation. Defendant, an Illinois corporation having its principal place of business in Indiana, not licensed to do business in Pennsylvania, sells its manufactured product direct to the ultimate consumer. It did so in Philadelphia through a local office manager or branch sales manager who had house to house solicitors under him, all compensated on a commission basis. Solicitors carried samples; took orders; collected the appropriate amount of commission on a sale at the time of taking an order; made no deliveries. All orders were sent by the branch sales manager to the main office of the corporation for approval and acceptance, shipments being made C. O. D. to the buyer credit being given in each case for the amount of the commission already paid. There was a Philadelphia office in charge of the branch sales manager who bore all expenses in connection therewith with the possible exception of rent (the record is silent as to who paid the rent). The company's name was on the office, on letter heads, and in telephone book. Service was made at this office on the person in charge thereof. The Pennsylvania law authorizes service of process on an agent of a foreign corporation provided the corporation has an agency or transacts business within the jurisdiction of the court. The U. S. Circuit Court of Appeals, Third Circuit, affirming the judgment below, on the question of service, holds the service good. The court says that in the case at bar much more than mere soliciting is evidenced; and further, that as the question of service is in one sense a question under the

state law "we, in consequence, owe a deference to a ruling of the state court, and such ruling supporting the service here has been made by the state court." Real Silk Hosiery Mills, Inc. vs. Philadelphia Knitting Mills Co., 46 F. (2d) 25. Wolf, Block, Schorr & Solis-Cohen, of Philadelphia (Philip W. Amram and Gordon A. Block, both of Philadelphia, of counsel), for appellant. Saul, Ewing, Remick & Saul, of Philadelphia (Thomas P. Mikell, of Philadelphia, of counsel), for appellee.

Taxation

Alaska.

Discriminatory fishing license tax imposed on nonresidents held invalid. (Included here because of collateral interest.) By act of Congress all rules and regulations relating to fish and fishing in all waters of Alaska over which the United States has jurisdiction are to be determined and established by the Secretary of Commerce for the purpose of protecting and conserving the fisheries. Included in the act is a provision that no citizen of the United States shall be denied the right to fish, etc., in Alaskan waters where fishing is permitted by the Secretary; it is further provided that nothing in the act shall curtail the powers granted to the territorial Legislature to impose taxes or any powers granted to the Legislature by the Organic Act. The Alaska Legislature enacted a law imposing an annual license tax of $250 in the case of nonresident fishermen and of $1, only, for residents. It is self evident that the right to fish may be so far restricted by the Secretary that a nonresident would be unable to take enough fish to cover the cost of the license. A resident of Washington, a fisherman, questions the validity of the taxing act, in this suit, on the grounds that the act discriminates against nonresidents and that the fee exacted is exorbitant, unreasonable and prohibitive. The territorial government asserts its broad power to destroy the right bestowed by Congress since it has been endowed with the power to tax and the power to tax is the power to destroy. Reversing the judgment below for the Territory, the United States Circuit Court of Appeals, Ninth Circuit, says that that proposition may be true in fact as well as in theory but it cannot be carried to the extent of destroying rights conferred by the constitution and laws of the United States and holds that as there is irreconcilable conflict between the act of Congress and the act of the territorial Legislature the latter must yield. Freeman vs. Smith, Territorial Treasurer, 44 F. (2d) 703. H. L. Faulkner, of Juneau, and John G. Lund and Martin J. Lund, both of Seattle, Wash., for appellant. John Rustgard, Atty. Gen., for appellee. Pillsbury, Madison & Sutro, F. D. Madison, and Francis Gill, all of San Francisco, Calif., amici curiae.

California.

Inclusion of interest from state and Federal bonds and of profits on sales of such bonds in the income which is the measure of a corporation franchise tax held valid. Having been given authority thereto by an amendment to the State Constitution the California legislature enacted in 1929 a Bank and Corporation Franchise Tax Act imposing, in the case of business corporations, an annual tax for the privilege of exercising their corporate franchises within the state measured by net incomes of the previous year. Gross income is defined as including, among other things, "all interest received from Federal, State, municipal or other bonds." In this action contesting the validity of the taxing act it was contended that to include in the tax base the interest from such tax-exempt bonds, and any profit resulting from the sale thereof violates both the State Constitution (exempting all state bonds from taxation), and the Federal Constitution (no state law to be passed impairing the obligation of contracts), and was otherwise illegal as an interference with Federal, state, municipal, etc., functions by imposing a burden on their instrumentalities—attempting to do indirectly that which could not be done directly. Relying on Flint vs. Stone Tracy Co. 220 U. S. 107 and Educational Films Corp. vs. Ward, 51 Sup. Ct. 170 (THE CORPORATION JOURNAL for February, 1931, page 329), and, indeed, the Macallen Company case, 279 U. S. 260 (THE CORPORATION JOURNAL for October, 1929, page 18) which is discussed at considerable length but differentiated because of the special Massachusetts facts there underlying, and, on the profits from sales issue, Wilcutts vs. Bunn, 51 Sup. Ct. 125 (THE CORPORATION JOURNAL for February, 1931, page 313), the California Supreme Court upholds the law on both the questioned points. Judge Langdon filed a dissenting opinion. The Pacific Co., Ltd., vs. Johnson, State Treasurer, U. S. Daily, April 11, 1931, page 6.

New Jersey.

Domestic corporation employing at least 50% of its capital stock in manufacturing within the state is entirely exempt from annual franchise tax. The tax in question is an annual franchise tax imposed on New Jersey corporations based on capital stock, manufacturing companies at least 50 per cent of whose capital stock is invested in manufacturing within the state being exempt. The New Jersey corporation here involved has a total capitalization of $500,000, all issued and outstanding, of which $260,000 is invested in manufacturing within the state, the remaining $240,000 being invested in the business of dealing in building materials. The state contended that the corporation is exempt to the extent only of the $260,000 of capital stock invested in manufacturing within the state; the corporation contended that it is exempt on its entire capital stock. With this latter contention the Supreme Court of New Jersey agrees, saying that the evident purpose of the exemption provision in the taxing act "is that whenever a corporation of this state has one-half or more of its issued and outstanding capital invested and employed in manufacturing carried on in this state, its whole capital stock (and not that alone em-

ployed in manufacturing) is exempt from tax under the statute." Somers Lumber Co. vs. State Board of Taxes and Assessments, 153 A. 393. Cole & Cole, of Atlantic City, for prosecutor. William A. Stevens, Atty. Gen., and John Solan, of Trenton, for respondent.

Rhode Island.

Service on corporation in connection with realty tax sale notice. One section of the Rhode Island statutes provides that in event of proposed sale of real estate on account of liability for taxes thereon notice shall be by publication; another section provides that "if the person to whom the estate is taxed is a resident of this state," in addition to publication notice shall be personally served on him "at his last and usual place of abode;" another section provides that the word "person" may be construed to include bodies corporate. Here, notice of sale for taxes on a parcel of a Rhode Island corporation's realty was left at the home of the corporation's treasurer but was not served on him personally. The Supreme Court of Rhode Island sustains the court below which held that there had been no legal service on the corporation. The court says that a corporation can hardly be said to have an abode but if it could be conceived as having one it would be at its place of business and not at the private residence of one of its officials. "We are of the opinion that a corporation may be deemed to be a person so as to make applicable to it the alternative provision for personal service; and that personal service on some officer of the corporation whose duty it would be to act for the corporation in its behalf would be a valid service on the corporation." Barone Lumber Co., Inc. vs. Sowden, 153 Atl. 308. McGovern & Slattery, James A. Higgins, and Walter Adler, all of Providence, for appellant. Archambault & Archambault, of Providence, for appellee.

Washington.

Admission fees and annual license taxes paid by foreign corporation under illegal law may be recovered though such taxes or fees were not paid under specific protest. So holds the Supreme Court of Washington. The fees and taxes in question were collected from a foreign corporation (respondent is assignee of its claims) under the law held to be unconstitutional by the United States Supreme Court in Cudahy Packing Co. vs. Hinkle, Secretary of State, et al., 278 U. S. 460, THE CORPORATION JOURNAL for April, 1929—the basis for the tax or fee being *authorized* capital stock in each case. The court says that the consequences to a foreign corporation attendant on its failure to pay (specific penalties, inability to maintain actions in the state courts, etc., etc.) are such that payments may be considered to have been made under such coercion or duress "as to render the state liable to return the amounts so paid, though it does not appear that they were paid under express protest." Union Bag and Paper Corporation vs. State, 295 P. 748. John H. Dunbar and V. D. Bradeson, both of Olympia, for the state. Grosscup & Morrow and Ben C. Grosscup, all of Seattle, for respondent.

CORPORATE MEETINGS HELD

During the past few weeks meetings of the corporations named below, among many others, have been held at some one of the offices of The Corporation Trust Company.

The National Cash Register Company Universal Pictures Company, Inc. Godchaux Sugars, Inc. Kelsey Hayes Wheel Corporation Motor Products Corporation American Founders Corporation McKesson & Robbins, Inc. Curtiss-Wright Corporation International Salt Company L. C. Smith & Corona Typewriters, Inc. General Cable Corporation American Steel Foundries Neptune Meter Company American Light & Traction Company American Ice Company Chicago Pneumatic Tool Company United Public Service Company Crucible Steel Company of America. Columbia Gas & Electric Corporation Loft, Inc. Stone & Webster, Inc. Transamerica Corporation Gulf States Steel Company Middlewest Utilities Company The Denver & Rio Grande Western Railroad Company Pullman, Incorporated

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Some Important Matters for May and June

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ARIZONA—Report to corporation commission and registration fee due during June.—Domestic and Foreign Corporations.

ARKANSAS—Income tax return due on or before May 15.—Domestic and Foreign Corporations.

DELAWARE—Annual franchise tax due between April 1 and July 1.—Domestic Corporations.

DOMINION OF CANADA—Annual summary due between April 1 and June 1.—Domestic Companies having capital stock.

FLORIDA—Annual list of officers and directors due on or before June 1.—Domestic and Foreign Corporations.

ILLINOIS—Annual license fee or franchise tax due on or before July 1 but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

INDIANA—Annual report due within 30 days after June 30.—Domestic and Foreign Corporations.

MAINE—Annual tax return due on or before June 1.—Domestic Corporations.

MISSOURI—Annual franchise tax due on or before May 15.—Domestic and Foreign Corporations.

Income tax due on or before June 1.—Domestic and Foreign Corporations.

MONTANA—Annual report within two months from April 1.—Foreign Corporations.

Annual license tax based on net income due between June 1 and June 15.—Domestic and Foreign Corporations.

NEBRASKA—Annual report and fee due on or before July 1.—Domestic Corporations.

NEVADA—Annual list of officers and designation and acceptance of resident agent due on or before July 1.—Domestic and Foreign Corporations.

NEW JERSEY—Annual tax return due on or before first Tuesday of May. —Domestic Corporations.

NEW YORK—Annual franchise tax report (under Art. 9-A, Tax Law—Form 3-IT) due on or before July 1.—Domestic and Foreign Business Corporations.

NORTH CAROLINA—Annual report to determine amount of franchise tax due July 1.—Foreign Corporations.

OREGON—Annual statement due during June.—Domestic and Foreign Corporations.

RHODE ISLAND—Corporate excess tax due on or before the first day of July.—Domestic and Foreign Corporations.

TENNESSEE—Annual report and franchise tax due on or before July 1.—Domestic and Foreign Corporations.

UNITED STATES—Second installment income tax due June 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

UTAH—Annual license tax report due on or before July 1.—Domestic and Foreign Corporations.

VIRGINIA—Income tax due on or before June 1.—Domestic and Foreign Corporations.

WASHINGTON—License tax due on or before July 1.—Domestic and Foreign Corporations.

WEST VIRGINIA—Tax statements due on or before July 1.—Domestic Corporations.

Annual license tax due on or before July 1.—Domestic and Foreign Corporations.

Fee to state auditor as attorney in fact due on or before July 1.—Foreign and Non-Resident Domestic Corporations.

WISCONSIN—Income tax due on or before June 1.—Domestic and Foreign Corporations.

WYOMING—Annual statement and license tax due on or before July 1.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

Amendments to Delaware Corporation Law, 1931. For convenience of counsel, The Corporation Trust Company has published in pamphlet form the 1931 amendments to the Delaware law, showing the full text of all parts amended and indicating by brackets the parts repealed and by italics the new matter added.

Incorporation in Canada Under the Dominion Act. Explains the procedure for incorporation of Canadian companies, the requirements, taxes, maintenance of office, etc., and all the special features of the Dominion Companies Act. Attorneys with a client who may, because of tariff barriers, be considering the organization of a Canadian company to conduct the company's Canadian or export business, will find this pamphlet extremely useful.

When Corporations Cross the Line. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

What Constitutes Doing Business. (Revised to April, 1930). A 208-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them also accessible either by case name or topic.

Questionnaire on Business Outside State of Organization. This is a form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.

Why a Transfer Agent? The question of why corporations, even those of small capitalization or with inactive or closely held stock, are safer when their stock records are in the hands of an experienced transfer agent is answered in this pamphlet by actual incidents from the experiences of different corporations.

Why Corporations Leave Home. This is an informal discussion, from the business man's point of view and in layman's language, of why so many business companies are organized under the laws of Delaware instead of in their home states. While primarily for laymen, lawyers also may find this pamphlet useful when considering the matter of what state to choose for incorporation of a client's business.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

Transfer Requirements Chart. This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfer are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.